



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Richard W. DeWeil - Waiver of Overpayments -
Knowledge of Pay Error
File: B-223597
Date: December 24, 1986

DIGEST

A reemployed annuitant of the Department of the Navy requests waiver of compensation overpayments where agency failed to deduct proper amount of annuity from salary. Due to administrative error and in spite of fact employee brought the error to the attention of the agency on 10 separate occasions, he continued to be overpaid. Waiver is denied, in part. Even though an employee promptly and repeatedly brings pay errors to the attention of proper authorities, such action does not relieve him of the obligation to repay, when requested. An employee who accepts payments known to be erroneous cannot reasonably expect to retain them and should make provision for eventual repayment. Therefore, collection is not against equity, good conscience, or contrary to the best interest of the United States.

DECISION

This decision is in response to a letter from Mr. Richard W. DeWeil appealing a determination by our Claims Group, Z-2876037, May 19, 1986, disallowing waiver of his debt to the United States. We sustain that action, in part, for the following reasons.

Mr. Richard W. DeWeil was employed by the U.S. Naval Communication Area Master Station, Naples, Italy, as a reemployed annuitant, effective April 10, 1982. Although his salary was subject to reduction by the amount of Civil Service annuity received, due to administrative error no reductions were made for pay periods ending May 1, 1982, through September 10, 1982, and incorrect reductions were made from September 11, 1982, through January 13, 1984. On audit it was determined that the overpayments totaled \$9,304.14. At the same time, it was also discovered that premiums for life insurance totaling \$712.20 had been improperly withheld from his pay during the same period. His account was credited with that amount, thus reducing his debt to \$8,591.94.

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In his initial request for waiver, Mr. DeWeil expressed awareness of the overpayments from the beginning. Our Claims Group determined that as a reasonable and prudent person he should have questioned the proper authority concerning the accuracy of his pay and retained the funds for subsequent refund. Having failed to do so, they concluded that he was partially at fault, thus precluding waiver under 5 U.S.C. § 5584 (1982).

The statement made by Mr. DeWeil and repeated in his appeal letter of June 6, 1986, is, in part, as follows:

"Upon receipt of my first paycheck * * * I notified CCPO and Finance of the fact I was being overpaid and it was evident that my pay was not being reduced by the amount of my annuity. As each check was received I repeated my request to have it corrected and after the third check I personally visited the Finance Section to point out the continuing error. For a total of 10-1/2 pay periods this overpayment continued with my REPEATED [request], upon receipt of each check to have it stopped. * * *"

Mr. DeWeil also stated in his June 6, 1986, letter that "I took action 10 separate times to have the error corrected."

The provision of law authorizing the waiver of claims of the United States against employees arising out of erroneous payments of pay, 5 U.S.C. § 5584, permits such waivers only when the collection of the erroneous payments would be against equity and good conscience and not in the best interests of the United States and only when there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee, or any other persons having an interest in obtaining the waiver.

It has been consistently held that when an employee is aware of an overpayment of pay when it occurs, he is not entitled to relief under 5 U.S.C. § 5584. If he accepts such an overpayment, knowing it to be erroneous, he cannot reasonably expect to retain it and he should make provision for its repayment. In such case, collection of an overpayment is not considered to be against equity, good conscience or contrary to the best interests of the United States, notwithstanding the fact that the employee may have brought the

situation promptly to the attention of the proper authorities and sought an explanation or correction of the error. See Beatrice M. Lansdown, B-201815, March 25, 1981, and decisions cited. See also Erik Brett Sager, B-218981, March 24, 1986, affirmed on reconsideration, October 7, 1986.

In the present case, Mr. DeWeil knew from the beginning that he was receiving pay in excess of his entitlement. The assertion that he repeatedly called the error to the attention of proper authority for a number of pay periods does not establish a basis upon which waiver may be granted. He knew the error was being committed each of the first 10 pay periods, and while he may not have known the exact dollar and cents amount of the overpayment, he knew that it was substantial. In view thereof, it is not unreasonable to conclude that he had the reasonable expectation that the error would eventually be discovered and, thus, should have put money aside for subsequent refund.

It is our view, therefore, that to require Mr. DeWeil to repay overpayment made for the first 10 pay periods would not be against equity and good conscience, nor contrary to the best interest of the United States.

That basis for waiver denial would not apply to the period September 11, 1982, through January 13, 1984. The record indicates that where no reductions were made during the earlier period, Mr. DeWeil's payroll office began making reductions thereafter. Even though the reductions were improperly computed, in view of the fact that substantial reductions were then being made, it is not unreasonable to conclude that Mr. DeWeil was completely unaware of any continued administrative error which caused additional overpayments of \$535.80. We also note that there were several underpayments during the same period.

We hereby waive recovery of that amount, which reduces Mr. DeWeil's debt due the United States to \$8,056.14, which is required to be recouped.



Acting Comptroller General
of the United States